

REMARKS**Status of the Claims**

Upon entry of the amendment above, claims 1, 2, 4-9, 11-24, 26-32, and 34-43 will be pending, claims 1, 6, 22, 29, 35, and 38 being independent.

Summary of the Office Action

Dependent claim 8 is rejected under 35 USC §112, second paragraph, as being indefinite for failing to provide proper antecedent basis for the expression "the outer heel reinforcement." See Section 1 on page 2 of the Office action.

Claims 6, 29-31, 33, 34, and 38-42 are rejected under 35 USC §102(b) as being anticipated by CAGLIARI (U.S. Patent No. 5,732,483). See Section 3 on page 2 of the Office action.

Claims 1-6, 11-16, 21, 29-34, and 38-43 are rejected under 35 USC §103(a) as being unpatentable over CAGLIARI in view of GRIFFIN (U.S. Patent No. 5,678,329). See Section 6, on page 3 of the Office action.

Claims 1, 2, 7-9, 15, 17, 19, 22, 24, 27, 28, 29, 30, and 31 are rejected under 35 USC §102(b) as being anticipated by FERRETTIE (U.S. Patent No. 2,306,306). See Section 4, beginning near the bottom of page 2 of the Office action.

Claims 18, 23, and 32 are rejected under 35 USC §103(a) as being unpatentable over FERRETTIE. See Section 8, on page 4 of the Office action.

Claim 10 is rejected under 35 USC §103(a) as being unpatentable over FERRETTIE in view of BARRET (U.S. Patent No. 5,940,990) or DONNADIEU (U.S. Patent No. 5,704,138). See Section 7, on page 4 of the Office action.

Claims 3-9, 12-14, 20, 25, 26, 31, and 33-43 are rejected under 35 USC §103(a) as being unpatentable over FERRETTIE in view of CAGLIARI or GRIFFIN. See Section 9, beginning at the bottom of page 4 of the Office action.

Response to the Office Action**A. Summary of Amendment**

Claim 8 is amended to resolve the issue raised in connection with the indefiniteness rejection.

Each of the independent claims has been amended to ensure that it includes a limitation pertaining to the outer reinforcing element(s) comprising a pair of tightening flaps and that each tightening flap has a free end (as discussed during an interview with the Examiner).

Thus, independent claim 1 has been amended by incorporating therein the subject matter of claim 3, *i.e.*, whereby the reinforcing element comprise tightening flaps, and that each of the flaps has a free end.

Claim 3, then, has been canceled and the dependency of claim 4 has been changed from claim 3 to claim 1.

Independent claim 6 has been amended to specify that each of the tightening flaps of the outer reinforcing element has a free end.

Dependent claim 7 has been amended to improve its form; if the Examiner were to prefer the previous wording, however, she is authorized to reinstate the previous wording by Examiner's Amendment.

Dependent claim 10 has been canceled.

Dependent claims 12, 13, and 20 have been amended to remove the tightening flap limitation, inasmuch as that limitation now appears in parent claim 1.

Independent claim 22 has been amended by incorporating therein the subject matter of claim 25, *i.e.*, whereby the reinforcing element comprise tightening flaps, and that each of the flaps has a free end.

Claim 25, therefore, has been canceled.

Independent claim 29 has been amended by incorporating therein the subject matter of claim 33, *i.e.*, whereby the reinforcing element comprise tightening flaps, and that each of the flaps has a free end.

Claim 33, therefore, has been canceled.

Independent claims 35 and 38 have been amended to specify that each of the tightening flaps of the outer reinforcing element has a free end.

B. Entry of Amendment and Allowance of Application

Entry of the amendment is requested, particularly because no new claims have been added, the total number of claims has been reduced, no new issues have been raised, and the Examiner had agreed during the interview that clarifying the flap limitation to specify that the flaps have free ends would be permitted by amendment at this time.

Further, allowance of the instant application is requested inasmuch as none of the documents relied upon in the rejections teach or suggest reinforcing elements in the form of tightening flaps, particularly flaps that have free ends, *i.e.*, that are not entirely cemented/glued to other portions of their boots/shoes, as explained during the interview.

Although Applicants would maintain that the ordinary meaning of the term "flap" might require there to be a free end, they have further specified such free end for clarification. Such free ends are shown, for example, in Applicants' Fig. 3.

Although Applicants submit that the amendment and the foregoing comments might suffice in replying to the rejections, the following comments are provided to ensure that this reply is considered to be completely responsive.

C. Withdrawal of Rejection Based Upon CAGLIARI

Applicants request that the rejection of claims 6, 29-31, 33, 34, and 38-42 based upon CAGLIARI be withdrawn.

CAGLIARI fails to teach or suggest a boot that includes an outer reinforcing element comprising a pair of tightening flaps (having "free ends"), inasmuch as any portion of CAGLIARI that might be construed as constituting "flaps" are entirely glued to their uppers, rather than having a portion that freely extends, as recited in independent claims 6, 29, and 38.

D. Withdrawal of Rejections Based Upon FERRETTIE

Applicants request that the rejection of claims 1, 2, 7-9, 15, 17, 19, 22, 24, 27, 28, 29, 30, and 31 based upon FERRETTIE be withdrawn, and that the rejection of claims 18, 23, and 32 based upon FERRETTIE be withdrawn.

Because independent claims 1 and 22 have been amended to include the limitations from dependent claims 3 and 25, respectively, which claims had not been rejected based solely upon FERRETTIE, withdrawal of the rejections is requested.

FERRETTIE fails to teach or suggest a boot that includes an outer reinforcing element comprising a pair of tightening flaps, as specified in independent claims 1 and 22.

E. Withdrawal of Rejection Based Upon FERRETTIE and BARRET or DONNADIEU

Claim 10 has been canceled and, therefore, withdrawal of the rejection is requested.

F. Withdrawal of Rejection Based Upon CAGLIARI and GRIFFIN

Applicants request that the rejection of claims 1-6, 11-16, 21, 29-34, and 38-43 based upon the combination of CAGLIARI and GRIFFIN be withdrawn.

Each of independent claims recite that the boot includes at least one outer reinforcing element that comprises a pair of tightening flaps, each flap having a free end.

This rejection is based upon the position that GRIFFIN provides a suggestion that it would have been obvious to have modified CAGLIARI to have a separate sole and reinforcement. Therefore, the boot of CAGLIARI would have three, rather than two, parts.

Neither CAGLIARI nor GRIFFIN teach or suggest a boot having at least one outer reinforcing element that comprises a pair of tightening flaps, each flap having a free end. For this reason alone, the rejection should be withdrawn.

GRIFFIN discloses an athletic shoe that includes a sole 11 that can be made of two parts, viz., an external sole 26 and a midsole 27. According to the examiner, the midsole 27 of GRIFFIN corresponds to the reinforcing element of Applicants' invention. The midsole 27 of GRIFFIN extends upwardly from the external sole 26 to lace eyelets 38.

Instead of having flaps, Fig. 4 of GRIFFIN shows that the midsole 27 ("reinforcing element") is fast to the upper, particularly inasmuch as the eyelets 38 extend completely through (see Fig. 3) the midsole and the upper 12. In column 1, lines 59-62 of GRIFFIN, the upper portions 35, 36 of the midsole 27 are secured to the upper by adhesive.

Similarly, CAGLIARI's elements 6-11 are not flaps. That is, elements 6-11 of CAGLIARI's boot are fully glued onto the upper, along the bottom face 5 of the upper (see column 3, lines 1-4) which is recessed for this purpose.

G. Withdrawal of Rejection Based Upon FERRETTIE, CAGLIARI, and GRIFFIN

Applicants request that the rejection of claims 3-9, 12-14, 20, 25, 26, 31, and 33-43 based upon the combination of FERRETTIE, CAGLIARI and GRIFFIN be withdrawn.

As mentioned above, none of the three patents teach or suggest the limitation regarding tightening flaps.

In addition, Applicants submit that it would not have been logical that the rubber foot-covering portion 10 of FERRETTIE (the "reinforcing element" according to the rejection) would be modified to have a flap structure.

The boot of FERRETTIE is a particular type of boot, a boot commonly referred to as a "duck boot." In this type of boot, as FERRETTIE explains (on page 1, column 1, lines 1-5) a rubber foot portion is attached, at a top margin, to a leather upper. See, *e.g.*, foot portion 10 in the drawings, which includes an outer sole 17 and foot enclosure 19 and see page 1, column 2, lines 36-39 of FERRETTIE's description.

For the purpose of rejecting claims that include the aforementioned "flap" limitation, it would appear necessary to base the rejection upon the proposition that it would have been obvious to have modified the "reinforcing element" of FERRETTIE by dividing it longitudinally to create flaps which are then tightened (with laces, for example).

Applicants submit that such a modification would not have been obvious and, further, neither of the secondary references teach or suggest the tightening flap limitation in any event.

H. Withdrawal of Rejection Based Upon FERRETTIE, or CAGLIARI in view of GRIFFIN, and TOMARO

Applicants request that the rejection of claims 11 and 21 based upon the combination of FERRETTIE, CAGLIARI, GRIFFIN, and TOMARO be withdrawn.

TOMARO is relied upon for a suggestion of a shock-absorbing sole. However, the deficiencies in claim 1 from which claims 11 and 21 depend are not remedied by TOMARO.

SUMMARY AND CONCLUSION

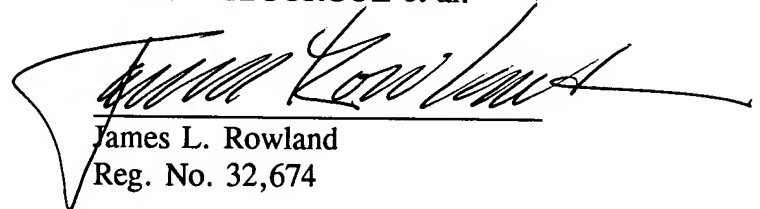
The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

A check is attached for payment of a fee for an extension of time. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

Further, although an extension of time for two months is believed to be necessary at this time, if it were to be found that an additional extension of time were necessary to render this reply timely and/or complete, Applicants request an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,
Gerald DELGORGUE et al.



James L. Rowland
Reg. No. 32,674

March 3, 2004
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

703-716-1191 (telephone)
703-716-1180 (fax)